

DANIEL J. QUATTRINI,)	
)	
Petitioner,)	3:12-cv-00226-RCJ-VPC
)	
vs.)	ORDER
)	
ROBERT LEGRAND, <i>et al.</i> ,)	
)	
Respondents.)	
	/	

The Court has reviewed the amended petition pursuant to Rule 4 of the Rules Governing 2254 Actions and finds that it must be dismissed without prejudice because it is a second or successive petition and petitioner has not obtained leave of the Ninth Circuit Court of Appeals to proceed.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) established a stringent set of procedures that a prisoner “in custody pursuant to the judgment of a State court,” 28

1 U.S.C. § 2254(a), must follow if he wishes to file a “second or successive” habeas corpus application
2 challenging that custody, § 2244(b)(1). In pertinent part, before filing the application in the district court,
3 a prisoner “shall move in the appropriate court of appeals for an order authorizing the district court to
4 consider the application.” § 2244(b)(3)(A). A three-judge panel of the court of appeals may authorize
5 the filing of the second or successive application only if it presents a claim not previously raised that
6 satisfies one of the two grounds articulated in § 2244(b)(2). § 2244(b)(3)(C); *Burton v. Stewart*, 549 U.S.
7 147, 152-53, 127 S.Ct. 793, 796 (U.S. 2007) citing *Gonzalez v. Crosby*, 545 U.S. 524, 529-530, 125 S.Ct.
8 2641 (2005); *see also Felker v. Turpin*, 518 U.S. 651, 656-657, 664, 116 S.Ct. 2333 (1996).

9 Petitioner indicates on the face of his petition that this is not his first petition brought
10 pursuant to 28 U.S.C. § 2254, (Amended Petition, p. 2, item 6), that the claim raised was not presented
11 in a the prior petition, and that he has not obtained leave of the Ninth Circuit Court of Appeals to
12 proceed. As a result, the petition will be dismissed without prejudice to afford petitioner an opportunity
13 to seek leave of the appeals court to proceed with this petition.

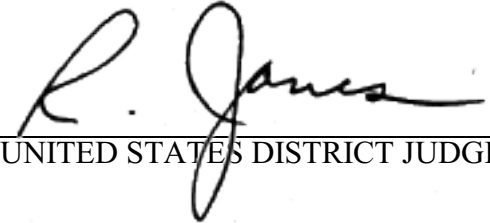
14 **IT IS THEREFORE ORDERED** that the Amended Petition (ECF No. 8) is
15 **DISMISSED WITHOUT PREJUDICE**.

16 **IT IS FURTHER ORDERED** that petitioner’s motion (ECF No. 7) is **granted**. The
17 Clerk shall send petitioner a copy of the docket sheet in this matter.

18 **IT IS FURTHER ORDERED** that the motion for appointment of counsel (ECF No. 9)
19 is **denied** as moot.

20 The Clerk shall enter judgment accordingly.

21 DATED this 3rd day of August, 2012.

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24 
25 UNITED STATES DISTRICT JUDGE
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